

objects of a company was considered, Lord Finlay, L.C. at p. 432, said: "... if these purposes (of the society) are illegal, their illegality is not mended by the certificate of incorporation." The Registrar of Societies has no jurisdiction to determine the questions which are being attacked in this application and it does not follow that because he applied his mind to the objections submitted to him and gave his views thereon, he was acting judicially in exercising the power to approve the amendments of the Rules. The proper remedy in this case is for the members of the Association to contest the validity or invalidity of the meeting of 4th December, 1955, before the competent Court, and indeed there is a suit pending where this matter is in issue.

For the above reasons I dismissed the application with costs.

Application dismissed.

Solicitors: *Lovelace & Hastings.*

**SAW SENG KEW & CO. LTD. v.
FIRM OF M.S.A. SHAIK OTHUMAN**

[O. C. J. (Shepherd J.) June 27, 1957]

[Penang — Summons-in-Chambers No. 121 of 1957]

Practice — R.S.C., O. 12, rr. 2 & 3, O. 63, r. 1 — Appearance entered in suit signed "per pro ..." by attorney in principal's name — Irregularity.

In this application the plaintiff sought to set aside for irregularity the appearance entered in the suit signed "per pro M.S.A. Shaik Othuman" on the ground that an attorney cannot enter appearance for, or in the name of his principal under O. 12 rr. 2 and 3. The appearance was entered by the defendant stating that he appeared in person, and the form used was signed as stated above.

Held: (1) the term "per pro" or "p.p" expresses an authority created by procuration or power of attorney. The use of the abbreviation implies a limited authority;

(2) in proceedings such as in this case their use has no relevance, and therefore the appearance signed as described was an irregularity;

(3) in this case the appearance must be set aside on the ground that it did not comply with the Rules of the Supreme Court.

Cases referred to:—

(1) *Choo Ang Chee v. Wee Theam Tew* noted in *Mallal's S.S. Practice* p. 48.

(2) *Ulster Bank v. Synnott* (1871) I.R. 5 Eq. 595.

SUMMONS-IN-CHAMBERS adjourned into Open Court.

C. O. Lim for the applicants.

Respondent in person.

Shepherd J. (delivering Oral judgment):— This is an application by way of summons-in-chambers in

Civil Suit No. 28 of 1957 praying that the appearance entered in this Suit signed "per pro M.S.A. Shaik Othuman" be set aside for irregularity on the ground that an attorney cannot enter appearance for, or in the name of his principal under Order 12 rules 2 and 3. Order 12 rules 2 and 3 read as follows.—

"2.— (1) A defendant shall enter his appearance by delivering or causing to be delivered to the Registrar a memorandum in writing, dated on the day of delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person, and the Registrar shall forthwith file the memorandum.

(2) He shall at the same time deliver to the Registrar a duplicate of the memorandum which the Registrar shall seal with the official seal, and mark with the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed and marked shall be a certificate that the appearance was entered on the day indicated.

3.— (1) A defendant shall on the day on which he enters appearance give notice thereof, in accordance with Form 10 in Schedule A, to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself.

(2) The notice may be served either in the ordinary way at the address for service, or by prepaid letter directed to that address and posted on the day of entering appearance."

In this case an appearance was entered on the 27th February, 1957 by the defendant stating that he appeared in person by means of a form as follows:—

"To,

The Registrar,
High Court,
Penang.

Be pleased to enter an appearance on behalf of the Firm of M.S.A. Shaik Othuman the Defendant in the above Suit.

Dated at Penang this 27th day of February, 1957.

Per Pro M.S.A. Shaik Othuman
(Signed) Illegible
Defendant abovenamed
in person.

The Defendant requires delivery of a Statement of Claim.

The address for service of the Defendant is at No. 51, Queen Street, Penang.

To:

The Plaintiffs abovenamed or their Solicitors,
Messrs. Lim, Lim & Oon of No. 29, Church
Street, Penang."

The affidavit in support by the plaintiffs-applicants stated that the Memorandum of Appearance was signed by one M.S.A. Zakariah per pro the defendant firm and that they (the plaintiffs-applicants) were informed by the Solicitors and verily believed that the said M.S.A. Zakariah either as such "per pro" or attorney of the defendant firm could not enter appearance for or in the name of his principal. The affidavit also averred that the defendant firm is within the jurisdiction of this Court.

The application was heard in Chambers, when Mr. C. O. Lim, learned Counsel for the plaintiffs-applicants urged that the appearance be set aside for irregularity. He also assured me that the principal of the defendant firm was still within the jurisdiction. This appearing to involve a matter which had never before been decided by this Court, so far as I was aware, the matter was adjourned into open Court for argument. Mr. C. O. Lim had referred me to a case quoted in *Mallal's Straits Settlements Practice* at page 48 under Order 12 rules 2 and 3 — *Choo Ang Chee v. Wee Theam Tew*⁽¹⁾ under the heading:—

" By causing to be delivered " — This means instructing a solicitor to do so. An attorney, though holding a Power of Attorney, cannot enter an appearance for, or in the name of, his principal, who is resident within the jurisdiction — *Choo Ang Chee v. Wee Theam Tew* (Suit No. 148 of 1910, Singapore) per Hyndman-Jones, C.J., 22nd April, 1910. But, so long as the appearance is signed by the defendant himself, or by a solicitor, it is immaterial by whom the memorandum of appearance is actually handed in, at the Registry, to be entered and filed. — *Ibid.*"

The case was not, in fact, reported and on inquiry from the Registrar, Supreme Court, Singapore the information received was that the last document filed in the Court file was the Memorandum of Appearance. I have not had the advantage, therefore, of reading the opinion of the late Chief Justice, Mr. Justice Hyndman-Jones. It appeared to me, however, to involve a matter of some interest, and Mr. C. O. Lim very kindly undertook during the adjournment to conduct a further research amongst the authorities. When the case was resumed in open Court, he drew my attention to Order 45 rules 4 and 5 of the Rules of the Supreme Court (White Book, 1957, page 858), where the footnote contains certain forms allowed, which are set out, and I agreed with Mr. C. O. Lim that No. (3), which reads:—

"(3) A.B., a partner in the firm of Brown & Co. at the time the alleged cause of action accrued."

might have been the appropriate way of entering an appearance in the circumstances if, indeed, the signatory were a partner or, indeed:—

"(1) A.B. trading as (or a partner in the firm of) Brown & Co."

might have been appropriate for all I know, "M.S.A. Shaik Othuman" being substituted, of course, for "Brown & Co." in each case.

Order 63 rule 1 (see page 536 of *Mallal's Straits Settlements Practice*) deals with the effect of non-compliance with the rules. This reads as follows:—

"1.—Non-compliance with any of the provisions of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void, unless the Court or a Judge so directs, but such proceedings may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with, in such manner and upon such terms as the Court or a Judge thinks fit."

The danger against which I wanted to guard was that this appearance might be set aside, judgment entered in default and a subsequent order made as a result of a motion to set aside the judgment, which would only leave the plaintiffs-applicants in a position of a moral victor still in possession of the field of battle. The plaintiffs-applicants would perhaps be awarded their costs, but such result would, in my view, not be in accordance with the tradition of the Courts that matters should be agitated and adjudicated upon with due expedition. "Per pro" is, of course, a term which is in common use in the commercial sphere, especially in connection with bills of exchange. The special authority of long usage has, I believe, been given to the use of procuration signatures and there is a well-established practice of using the phrase "per pro" (an abbreviation, of course, for per procurationem) as indication that signatures used in connection with bills of exchange whether drawn or endorsed in this way are used by the authority of another person. The term "per pro" or "p.p." expresses an authority erected by procuration or power of attorney. The learned Vice-Chancellor is reported to have said in dealing with the respective forms "per pro" and "p.p." in the case of *Ulster Bank v. Synnott*⁽²⁾ (at page 612):—

"Except in cases where the law requires an agent to have authority, in writing, I do not see how using one form instead of the other can be material."

The use of the abbreviation implies a limited authority.

In proceedings such as the present, however, their use has no relevance, and I hold that the appearance signed in the way I have described is an irregularity.

As a result I accede to the application and set aside this appearance on the ground that it does not comply with the Rules of the Supreme Court. There will be an order that the Writ of Summons be re-served upon the defendant in accordance with the Rules. In addition there should be attached to the Writ of Summons a copy of this oral judgment. The plaintiffs-applicants to have their costs in any event.

Application granted.

Solicitors: *Lim, Lim & Oon.*